UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TT & W FARM PRODUCTS, INC. d/b/a
HEARTLAND CATFISH COMPANY, INC. and
HEARTLAND ALABAMA, LLC,

Respondent,

and

Case No. 26-CA-23722

TONEY WILLIAMS, AN INDIVIDUAL,

Charging Party.

RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

TO THE NATIONAL LABOR RELATIONS BOARD:

Pursuant to §102.46 of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board"), TT&W Farm Products, Inc. d/b/a Heartland Catfish Company, Inc. and Heartland Alabama, LLC (hereinafter "Company", "Respondent" or "Heartland") files the following Exceptions to the Decision of the Administrative Law Judge in the above case. These Exceptions are explained in more detail in Respondent's supporting Brief filed this same date.

1. Respondent excepts to the Administrative Law Judge's finding that "three of the [Respondent's] rules are, on their face, unlawfully broad or ambiguous and can be reasonably read by the employees to infringe on their protected rights within the meaning of the Act", even absent any evidence of enforcement of such rules. (ALJ 6). This finding concerns the Company's rules concerning distribution of handbills or similar literature on Company property regarding "tickets" or "soliciting contributions", several rules against the interruption of work

¹ References to the Administrative Law Judge's Decision are parenthetically designated "ALJ" followed by the referenced page number(s).

and leaving one's work station, and a rule against "bearing false witness." As demonstrated in Respondent's supporting brief, these findings are incorrect and the rules do not violate the Act.

- 2. Respondent excepts to the Administrative Law Judge's findings that the employer's rule prohibiting "unauthorized selling or distribution of tickets, soliciting contributions or distributing handbills or similar literature on Company property at any time" is unlawfully broad and that the language of this rule prohibiting distribution of "handbills or similar literature" does not relate back to the selling or distribution of "tickets" or "soliciting contributions." (ALJ 6). As demonstrated in Respondent's supporting brief, these findings are incorrect.
- 3. Respondent excepts to the Administrative Law Judge's grammatical construction that the rule in issue in Exception No.2 would have been legal if it had included the words "by handbilling or similar nature" as this is unnecessary as the rule is valid "as is" and Respondent excepts to the Administrative Law Judge's finding that a reasonable employee/person would not believe that the phrase "handbilling or similar literature" does not relate back to the lawful prohibition of distribution of "tickets" or "soliciting contributions." (ALJ 6). As demonstrated in Respondent's supporting brief, these findings are incorrect.
- 4. Respondent excepts to the Administrative Law Judge's finding that the Respondent's rule prohibiting "unauthorized selling or distribution of tickets, soliciting contributions or distributing handbills or similar literature on Company property at any time" are "three distinct types of conduct", that "a reasonable employee would read it as such", that the language prohibiting distribution of handbills or similar literature" had nothing to do with distributing tickets or soliciting contributions" and, as a result, the rule has reasonable tendency

to limit and proscribe protected activity. (ALJ 6; p.6 fn 2). As demonstrated in Respondent's supporting brief, these findings are incorrect.

- 5. Respondent excepts to the Administrative Law Judge's finding that the employer's rule referenced in Exceptions Nos. 2-4 is "ambiguous" and that Respondent had a duty to rewrite the rule to make it clear that it only forbid the sale or distribution of tickets or solicitation of contributions, as this is unnecessary since the rule is clearly limited to this lawful prohibition. (ALJ 7).
- 6. Respondent excepts to the Administrative Law Judge's failure to find that there is no evidence in this matter that any of the Respondent's employees have a present day recollection of any of the rules in issue as the only time the employees see this handbook is at the time of their hire. (ALJ 7).
- 7. Respondent excepts to the Administrative Law Judge's finding that simply because each employee is required to sign an acknowledgement that they are responsible for abiding by the rules, policies and procedures outline in the handbook at the time of their hire, that this somehow cures the absence of evidence of any employee knowledge of the rules in question. (ALJ 7). As demonstrated in Respondent's supporting brief, this finding is incorrect.
- 8. Respondent excepts to the Administrative Law Judge's finding that "surely Respondent is not contending that the rules in the handbook do not apply and that it could not penalize employees for violating the rules simply because the employees did not know about the rules or did not see the handbook since they were first hired" and that "[Nor] does the handbook state that the employees are excused from following the rules because they did not know about them..." as these findings/conclusions are not relevant to the operative issue the issue is

whether or not "employees can reasonably construe rules to prohibit Section 7 activity." There can be no such belief or construction with respect to rules which are unknown. (ALJ 7).

- 9. Respondent excepts to the Administrative Law Judge's failure to find that its lawful no-solicitation/distribution rule on page 2 of the handbook takes precedence over the alleged unlawful no-distribution rule regarding tickets and solicitation of contributions on page 2 of the handbook and his finding that the lawful no-solicitation/distribution rule on page 2 of the handbook does not address "what can or cannot be done on company property", as the no-solicitation/distribution rule on page 2 of the handbook specifically addresses the distribution of non-work related materials "in work areas." (ALJ 7).
- 10. Respondent excepts to the Administrative Law Judge's finding that the Company's lawful no-solicitation/distribution rule on page 2 of the handbook would confuse employees with respect to the conduct specified in the no distributing of tickets/soliciting contributions rule on page 22 of the handbook. (ALJ 7). As demonstrated in Respondent's supporting brief, this finding is incorrect.
- 11. Respondent excepts to the Administrative Law Judge's distinguishing of cases cited in the Employer's Brief which clearly support the Employer's position in this matter that its no distribution of tickets/soliciting contributions rule on page 22 of the handbook is lawful. (ALJ 7, fn2).
- 12. Respondent excepts to the Administrative Law Judge's findings that its various handbook rules regarding prohibiting the interruption of work and leaving one's work station without permission, all of which have different ramifications such as discipline, or discharge, or treatment as voluntary quit, (paragraphs 6(b), (c), (d) and (f)) of the Complaint), can be interpreted by a reasonable person as prohibiting an employee's right to engage in lawful strikes

and work stoppages. (ALJ 9). As demonstrated in Respondent's supporting brief, these findings are incorrect.

- 13. Respondent excepts to the Administrative Law Judge's finding that one of the rules in question cited in paragraph 6(f) of the Complaint does not simply prohibit deliberate slowdowns which is unprotected activity. (ALJ 9). As demonstrated in Respondent's supporting brief, this finding is incorrect.
- 14. Respondent excepts to the Administrative Law Judge's failure to find that safety concerns on the assembly line in question are sufficient to overcome any inference that the rules regarding the interruption of work and leaving one's work station without permission are unlawful. (ALJ 9).
- 15. Respondent excepts to the Administrative Law Judge's distinguishing of the case of *Wilshire at Lakewood*, 343 NLRB 141 (2004) and his finding that Respondent's operation does not present similar concerns warranting a determination that the rules regarding the interruption of work and leaving one's work station without permission are lawful. (ALJ 9-10).
- 16. Respondent excepts to the Administrative Law Judge's findings that Respondent's rule prohibiting "bearing false witness for or against the Company..." prohibits mere false statements and thus infringes on the right of employees to make false but non-malicious statements in the course of engaging in protected or concerted activity. (ALJ 11). As demonstrated in Respondent's supporting brief, these findings are incorrect.
- 17. Respondent excepts to the Administrative Law Judge's findings that Respondent's rule prohibiting bearing false witness is unlawful under the holding of *Lafayette*Park Hotel and that an ordinary employee would read the term "bearing false witness" to mean

that he could not tell a mere lie or falsehood when talking about the employer. (ALJ 11). As demonstrated in Respondent's supporting brief, these findings are incorrect.

- Respondent's rule prohibiting bearing false witness "specifically focuses on lies about the company" and, as a result, that this chills protected activity because employees have the right under the Act to criticize their employer and such criticism may include "the occasional falsehood or hyperbolic comment." (ALJ 11). As demonstrated in Respondent's supporting brief, these findings are incorrect.
- 19. Respondent excepts to the Administrative Law Judge's finding that Respondent's contention that its rule prohibiting bearing false witness relates to intentional lies is a "strained reading." (ALJ 11).
- 20. Respondent excepts to the Administrative Law Judge's findings that an employee who does not read Black's Law Dictionary and does not deal in the subtleties of legal technicalities would make a distinction that the rule against bearing false witness applies to intentional lies as opposed to hyperbolic comment and that "an ordinary employee reading the term would reasonably understand it to mean simply lying or making a false statement." (ALJ 11). As demonstrated in Respondent's supporting brief, these findings are incorrect.
- 21. Respondent excepts to the Administrative Law Judge's findings that the Company's rule against bearing false witness is "so ambiguous so as to confuse employees into believing that a merely false statement against their employer in the course of protected concerted activities would subject them to violation of the rule and possible discharge." (ALJ 11). As demonstrated in Respondent's supporting brief, these findings are incorrect.

- 22. Respondent excepts to the Administrative Law Judge's finding that its rule against bearing false witness is more offensive than the rule in *Lafayette Park Hotel*. (ALJ 11).
- 23. Respondent excepts to the Administrative Law Judge's finding that its rule against bearing false witness is violative of Section 8(a)(1) of the Act. (ALJ 11).
- Respondent excepts to the Administrative Law Judge's conclusion of law that "by maintaining handbook rules that prohibit distribution of handbills or similar literature on company property at any time, interruption of work and leaving one's work station without permission of a supervisor and bearing false witness against the company, Respondent violated Section 8(a)(1) of the Act." (ALJ 12). As demonstrated in Respondent's supporting brief, these rules are lawful.
- 25. Respondent excepts to the Administrative Law Judge's conclusion of law that the rules in question in Exception No.24 are unfair labor practices affecting commerce. (ALJ 12).
- Respondent to rescind the rules in question or supply employees with handbook inserts stating that the alleged unlawful rules have been rescinded or institute new and lawfully worded rules on adhesive backing which will cover the old and unlawful broad rules until the handbook is republished, or that any subsequent handbooks must include such new inserts before distribution to employees and that the Respondent must be ordered to post an appropriate notice. (ALJ 12). As demonstrated in Respondent's supporting brief, no violations of the law have occurred.
- 27. Respondent excepts to the Administrative Law Judge's Order finding that it maintained an impermissible rule prohibiting its employees from distributing handbills or similar literature on company property at any time, interruption of work and leaving one's work station without permission of a supervisor and bearing false witness against the company. (ALJ 12).

28. Respondent excepts to the Administrative Law Judge's Order that it rescind the handbook rules in issue, furnish all current employees with revised rules and post the notice attached to the decision. (ALJ 12-13). As demonstrated in Respondent's supporting brief, no remedy is necessary as no violations of the law have occurred.

CONCLUSION

WHEREFORE, the Respondent requests that these Exceptions be sustained and that the Complaint in this matter be dismissed in its entirety.

Respectfully submitted this the $\cancel{14}^{TH}$ day of January, 2011.

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

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CERTIFICATE OF SERVICE

I, John S. Burgin, do hereby certify that I have this day served the foregoing Respondent's Exceptions to the Administrative Law Judge's Decision upon the following persons:

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Dated this the 14 TH day of January, 2011.

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

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